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February 1, 2007

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: WC Docket Nos. 06-54 & 06-55
Supplement to *Ex Parte* Presentation

Dear Ms. Dortch:

In a recent *ex parte* meeting with Federal Communications Commission ("FCC" or "Commission") Chairman Kevin J. Martin,[1] the South Carolina Telephone Coalition ("SCTC") demonstrated that although Time Warner Cable's Digital Phone service purportedly uses voice over Internet protocol ("VoIP") technology in providing its telephony service, the service characteristics and network configuration do not "share similar basic characteristics" of Vonage's DigitalVoice service as outlined in the Commission's Vonage Order.[2] Based upon this fact, the SCTC contended that the Commission would not be able to apply its ruling in the Vonage Order to the petitions filed by Time Warner Cable in the above-referenced proceedings. This letter supplements the views of the SCTC.

I. The Vonage Order Does Not Apply to the Service Provided by Time Warner

In its Vonage Order, the FCC found that Vonage's DigitalVoice service cannot be separated into interstate and intrastate communications in order to comply with state commission requirements without negating valid federal policies and rules.[3] The Commission then ruled that "to the extent

[1] *See* Notice of *Ex Parte* Presentation filed by the SCTC on January 30, 2007 in WC Docket Nos. 06-54 & 06-55 (summarizing meeting held on January 29, 2007 in which representatives of the SCTC conducted a conference call with Chairman Kevin J. Martin, his Chief of Staff, Daniel Gonzalez, the Chairman's senior legal advisor, Michelle Carey, and the Chief of the Wireline Competition Bureau, Thomas Navin, to discuss two petitions filed by Time Warner Cable filed in these dockets).

[2] *See Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004) ("Vonage Order") at para. 1, petition for review pending, Nat 'l Ass 'n of State Util. Consumer Advocates v. FCC, No. 05-1122 (8th Cir).

[3] Vonage Order at para. 1.

that other VoIP services are not the same as Vonage's but share similar basic characteristics, we believe it highly unlikely that the Commission would fail to preempt state regulation of those services to the same extent."[4] The Commission specifically stated that cable companies that provide VoIP services could be among those services that would qualify for the same treatment afforded to Vonage as long as the same "basic characteristics" found in Vonage's DigitalVoice service were present.[5] The Commission listed these "basic characteristics" as follows:

> a requirement for a broadband connection from the user's location; a need for IP-compatible CPE; and a service offering that includes a suite of integrated capabilities and features, able to be invoked sequentially or simultaneously, that allows customers to manage personal communications dynamically, including enabling them to originate and receive voice communications and access other features and capabilities, even video. In particular, the provision of tightly integrated communications capabilities greatly complicates the isolation of intrastate communication and counsels against patchwork regulation.[6]

Accordingly, in order for the Vonage Order to apply to Time Warner Cable, at a minimum these basic characteristics must be present in Time Warner Cable's DigitalVoice offerings. From statements made by Time Warner Cable's Chairman & Chief Executive Officer, Glenn A. Britt, before the U.S. Senate Committee on Commerce, Science & Transportation ("Testimony")[7] and in "Frequently Asked Questions" ("FAQ's") posted on its website,[8] however, it is clear that these basic characteristics are not present in Time Warner Cable's Digital Phone service.

A. Time Warner Cable's Digital Phone Service Does Not Require a Broadband Connection From the User's Location

In the Vonage Order, the FCC made it clear that central to its decision to preempt was that Vonage's DigitalVoice furthered the goals of federal law and policy because the service was "capable of being accessed only via broadband facilities . . . thus driving consumer demand for broadband connections, and consequently encouraging more broadband investment and deployment consistent with the goals of section 706 [of the Telecommunications Act of 1996]."[9] However, according to Mr. Britt's Testimony and Time Warner Cable's FAQs, Time Warner Cable's Digital Phone does not require the user to have a broadband connection. In his Testimony, Mr. Britt described how customers access the Digital Phone service by stating,

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[4] *Id.* (footnote omitted).

[5] *Id.* at para. 32.

[6] *Id.* (footnotes omitted).

[7] *See* Attachment 1 - Transcript of testimony of Mr. Glenn A. Britt, Chairman & Chief Executive Officer, Time Warner Cable, given at full committee hearing on VoIP held by the U.S. Senate Committee on Commerce, Science & Transportation on Feb. 24, 2004 (http://commerce.senate.gov/hearings/).

[8] *See* Attachment 2 – Time Warner Cable "Digital Phone FAQs" (www.twcdigitalphoneoffers.com/).

[9] Vonage Order at para. 36 (footnotes omitted).

> When a customer orders Digital Phone service, Time Warner Cable installs a new cable modem/ telephony device called a Multimedia Terminal Adapter or 'MTA' in the customer's home. The MTA is connected to existing inside wiring, enabling a subscriber to receive voice service over each existing telephone jack in his or her home.[10]

Thus, according to Mr. Britt's description, rather than requiring customers to have a DSL or cable modem connection, Time Warner Cable's Digital Phone service can be "installed" at a customer's location without such access. The absence of a requirement to have a broadband connection is further evidenced by statements made in Time Warner Cable's FAQs such as: "Time Warner Cable offers Digital Phone service to customers that subscribe to High-Speed Internet or Cable services in a majority of communities in our service area" and "you do not have to have other services from Time Warner Cable to get Digital Phone."[11]

B. The Way Time Warner Cable Provisions its Digital Phone Service is Significantly Different From the Characteristics Described in the Vonage Order

A second central component to the Vonage Order was the FCC's determination that Vonage used the public Internet in the provision of its services. In determining that Vonage's DigitalVoice service cannot be separated into interstate and intrastate communications, the Commission found that it was the use of the "global and open architecture" that is inherently part of the public Internet that made jurisdictional determinations about particular DigitalVoice communications based on the geographic "end-to-end" analysis "difficult, if not impossible."[12] Under this analysis, the Commission observed that with Vonage's service, it is difficult or impossible to pinpoint the geographic location of the end user and the geographic location of the termination of the communication because of "the inherent capability of IP-based services to enable subscribers to utilize multiple service features that access different websites or IP addresses during the same communication session and to perform different types of communications simultaneously, none of which the provider has a means to separately track or record."[13] The Commission then

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[10] Testimony at 1.

[11] FAQs at 2-3 (emphasis supplied).

[12] Vonage Order at para. 24 ("The Internet's inherently global and open architecture obviates the need for any correlation between Vonage's DigitalVoice service and its end users' geographic locations. . . . As networks have changed and services provided over them have evolved, the Commission has increasingly acknowledged the difficulty of using an end-to-end analysis when the services at issue involve the Internet. DigitalVoice shares many of the same characteristics as these other services involving the Internet, thus making jurisdictional determinations about particular DigitalVoice communications based on an end-point approach difficult, if not impossible").

[13] *Id.* at para. 25 (footnote omitted). The Commission then cited the following examples: "a DigitalVoice user checking voicemail or reconfiguring service options would be communicating with a Vonage server. A user forwarding a voicemail via e-mail to a colleague using an Internet-based e-mail service would be 'communicating' with a different Internet server or user. An incoming call to a user invoking forwarding features could 'terminate' anywhere the DigitalVoice user has programmed. A communication from a DigitalVoice user to a similar IP-enabled provider's user would 'terminate' to a geographic location unknown either to Vonage or to the other provider."

determined, "these functionalities in all their combinations form an integrated communications service designed to overcome geography, not track it" and declared "[i]ndeed, it is the total lack of dependence on *any* geographically defined location that most distinguishes DigitalVoice from other services whose federal or state jurisdiction is determined based on the geographic end points of the communications."[14]

The Commission also found that it was Vonage's use of the public Internet in the provision of its services that was central to its determination that preemption was necessary to ensure that valid federal policies and rules were not thwarted. In the Vonage Order, the Commission found that the policies and goals of section 230 of the Telecommunications Act of 1996 ("1996 Act") were consistent with its decision to preempt Minnesota's order.[15] The FCC observed that in section 230, Congress defined the Internet as "an *international* network of federal and nonfederal interoperable packet switched data networks" and declared that Vonage's DigitalVoice service falls "squarely" within this definition and is "unquestionably an Internet service" as defined by section 230 of the 1996 Act because it places and receives calls over the Internet.[16] Based on this finding, the Commission ruled that "in interpreting section 230's phrase 'unfettered by Federal or State regulation,' we cannot permit more than 50 different jurisdictions to impose traditional common carrier economic regulations such as Minnesota on DigitalVoice and still meet our responsibility to realize Congress's objective."[17]

Time Warner Cable's VoIP service, however, does not use the public Internet to provide its services. According to Mr. Britt's Testimony,

> Time Warner Cable's Digital Phone service is delivered over a managed network with quality of service standards designed to ensure that customers are provided with the same high quality of service they have come to expect from traditional telephone service. The upgraded, two-way capable, digital network that we have built during the past several years is the central component of the architecture used to provide Digital Phone services. We are deploying devices called 'softswitches' on a regional basis, which manage, route, and control calls originating from and terminating into our network and provide vertical telephone features (such as caller ID and call waiting) without the need for a Class 5 circuit switch. Using the softswitch architecture, calls travel over a network managed by Time Warner Cable—**not the public Internet**—as they move toward their final destination, whether that is on our network or a location on the Public Switched Telephone Network (PSTN). When calls to reach customers not served by Time Warner Cable

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[14] *Id.* (footnote omitted).

[15] *Id.* at para. 33.

[16] *Id.* at n.115 (citing 47 U.S.C. § 230(f)(1) (emphasis added in Vonage Order)).

[17] *Id.* at para. 35.

> must traverse the PSTN, Time Warner Cable completes these calls through its relationships with competitive local exchange carriers.[18]

Neither in Mr. Britt's Testimony nor in the FAQs is there any mention of the ability to provide the "tightly integrated communications capabilities" that are cited by the Commission. On the contrary, in specifying the services and features that Time Warner's Digital Phone provides, the FAQ merely states, "[p]opular calling features such as Call Waiting, Caller ID, Call Forwarding and Speed Dial are included at no extra cost" and "Digital Phone Service offers Caller ID, as well as Call Waiting and Call Waiting ID, absolutely free as part of the Digital Phone calling plan."[19] Further, the manner in which Mr. Britt describes the way that Time Warner Cable's Digital Phone service is provisioned is strikingly similar to the way that some of the SCTC members provision their services and is drastically different from the way the Commission describes Vonage's service.[20] In the Vonage Order the Commission described Vonage's provision of its integrated communications capabilities as follows:

> Once the CPE and software are installed and configured, the customer may place or receive calls over the Internet to or from anyone with a telephone number – including another Vonage customer, a customer of another VoIP provider, a customer of a commercial mobile radio service (CMRS) provider, or a user reachable only through the public switched telephone network (PSTN). In any case, the subscriber's outgoing calls originate on the Internet and are routed over the Internet to Vonage's servers. If the destination is another Vonage customer or a user on a peered service, the server routes the packets to the called party over the Internet and the communication also terminates via the Internet. If the destination is a telephone attached to the PSTN, the server converts the IP packets into appropriate digital audio signals and connects them to the PSTN using the services of telecommunications carriers interconnected to the PSTN. If a PSTN user originates a call to a Vonage customer, the call is connected, using the services of telecommunications carriers interconnected to the PSTN, to the

[18] Testimony at 1-2 (emphasis supplied).

[19] FAQ at 2 & 6. The FAQ states that voice mail is available but makes no reference to forwarding a voicemail via e-mail or any of the other "tightly integrated communications capabilities" referenced by the Commission as being basic characteristics of VoIP providers.

[20] A diagram is attached as Attachment 3 which demonstrates our understanding of the way Time Warner Cable provisions its Digital Phone service according to Mr. Britt's Testimony. The diagram may as well be of any number of rural telecommunications providers. Indeed many traditional phone systems are utilizing softswitches and deploying IP transport to the customer's premise over managed networks. According to our understanding of Mr. Britt's testimony and the FAQs, in addition to all the other salient features of this diagram, the CPE used by Time Warner Cable (MTA device/ Digital Phone Service modem) which is "installed" at the customer's premise is owned by Time Warner Cable and not the customer. *See* Testimony at 1 ("Time Warner Cable installs a new cable modem/telephony device called a Multimedia Terminal Adapter or 'MTA' in the customer's home. The MTA is connected to existing inside wiring, enabling a subscriber to receive voice service over each existing telephone jack in his or her home"); FAQ at 5-6 ("Time Warner Cable maintains the Digital Phone Service modem. In fact, one of Digital Phone's greatest benefits is that Time Warner Cable automatically upgrades your equipment to the latest technology with the installation of the Digital Phone Service modem . . . . There is no additional equipment to buy as long as you have a telephone in your home").

> Vonage server, which then converts the audio signals into IP packets and routes them to the Vonage user over the Internet. Together, these integrated features and capabilities allow customers to control their communications needs by determining for themselves how, when, and where communications will be sent, received, saved, stored, forwarded, and organized.[21]

Given the fact that Time Warner Cable's Digital Phone service does not require a broadband connection and the dramatic differences in the way that Time Warner Cable provisions its Digital Phone service as compared to the characteristics set forth in the Vonage Order, a decision to extend the Vonage Order to apply to services such as Time Warner Cable's Digital Phone service would most certainly be challenged and would result in chaos in the communications industry since telecommunications carriers that have a network configuration similar to that of Time Warner Cable would likely no longer be subject to state oversight.

II. The Rationale for Preemption Does Not Exist in the Context of Time Warner Cable's Digital Phone Service

A. A Fact-Intensive Inquiry Must be Conducted Before the Vonage Order is Extended to Cable Companies that Provide VoIP Services

One of the best locations for information regarding the Commission's interpretation of the Vonage Order is the Brief for Respondents filed on behalf of the Commission by the Commission's Office of General Counsel ("OGC") before the United States Court of Appeals for the Eighth Circuit.[22] In its Brief, the OGC responds to assertions made by the New York State Department of Public Service ("NYPSC") that "one category of VoIP services that should not be preempted is 'fixed' VoIP services because those services have 'geographically fixed endpoints.'"[23] According to the Brief, the NYPSC specifically cited cable companies that provide VoIP services as falling in the category of "fixed" VoIP services because these services "'have fixed end points associated with the end user's location.'"[24]

In opposing the NYPSC's argument, the OGC argued that this assertion must be rejected by the court because the NYPSC is attempting to obtain a ruling from the court on "how the FCC's prediction would apply to fixed VoIP services" and thus a ruling on this issue would be premature.[25] The OGC explained that the FCC made a "prediction" in the Vonage Order by

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[21] Vonage Order at para. 8 (emphasis supplied) (footnotes omitted).

[22] Brief for Respondents, Minnesota Public Utilities Commission, et al. v. FCC, Nos. 05-1069, 05-1122, 05-3114 & 05-3118 (8th Cir.) ("Brief").

[23] Brief at 61-62 *citing* Brief for NYPSC at i. In a fixed VoIP service, the location of the user is clearly identified and does not move from the location where customer's terminal equipment is located. This differs from Vonage's service which is "nomadic." According to the Commission, "Vonage's service is fully portable; customers may use the service anywhere in the world where they can find a broadband connection to the Internet." Vonage Order at para. 5.

[24] Brief at 63 citing NYPSC Brief at 7.

[25] Brief at 62.

stating that "it was 'highly unlikely' that 'it would fail to preempt state regulation' of VoIP services that 'share similar basic characteristics' with DigitalVoice."[26] The OGC declared, "[t]he FCC's decision nowhere addresses fixed VoIP services, nor did the FCC have before it any particular state regulation seeking to regulate such services, …."[27] The OGC further stated that "VoIP services can be provided in a variety of different ways . . . and the particular characteristics of a fixed VoIP service may bear on the FCC's preemption analysis."[28]

Moreover, the OGC cited *Alascom* and inferred that the determination that the NYPSC seeks requires a "fact-intensive" inquiry.[29] Thus, it is reasonable to conclude that according to the FCC's OCG, the issue of whether the Vonage Order applies to fixed VoIP services offered by cable companies must be determined through a fact-intensive inquiry. Because Time Warner Cable's Digital Phone service does not use broadband connections or the public Internet, this fact-intensive inquiry must first determine whether Time Warner Cable's Digital Phone service could even be considered a VoIP service as it is defined in the Vonage Order. If so, then a determination would have to be made as to whether the service could qualify for the same relief that was granted to Vonage under the Vonage Order since the service has geographically fixed end points. Time Warner Cable's Digital Phone service is clearly separable at the time a call enters the public switched telephone network. Calls originating from a Time Warner Cable user destined to a user on the PSTN will have information associated with the routing and billing of the call.[30]

B. No Justification Exists for the FCC to Exercise its "Full Preemption Authority"

In its Brief, the OGC asserts that even if a clear separation of interstate and intrastate services can be found, "the FCC would still have the authority to preempt the [Minnesota Public Utility Commission] Order in order to effectuate federal policies with respect to the component of Digital Voice that is used for interstate communications."[31]

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[26] *Id.* at 63.

[27] *Id*. at 22 (emphasis supplied). See *Id.* at 65 (the OGC stated, "the FCC has not yet been squarely presented with the issue of whether these technological differences between the PSTN and the Internet are sufficient to justify preemption of state entry and tariffing regulation of fixed VoIP services").

[28] *Id.* at 63.

[29] See Brief at 63 *citing Alascom v. FCC*, 727 F.2d 1212, 1220 (D.C. Cir. 1984) ("*Alascom*") ("'[t]he presence of such fact-intensive inquires mandates deferral of review until an actual preemption of a specific state regulation occurs'").

[30] Thus, intrastate calls are separable. As observed in the Brief, "[w]hile the FCC has plenary authority over interstate communications, the Communications Act generally does not authorize the FCC to regulate intrastate communications, but instead 'leaves that authority to the states.'" Brief at 26 *citing Qwest Corp. v. Scott*, 380 F.3d 367, 370 & n.1 (8th Cir. 2004) ("*Qwest Corp.*"), Section 2(b) of the Communications Act, 47 U.S.C. § 152(b) & *Louisiana Pub. Serv. Comm'n v. FCC*, 467 U.S. 355, 360 (1986).

[31] Brief at 51. The OGC explains, "in other contexts, the FCC has declined to exercise its full preemption authority and, instead, has permitted the states to assert jurisdiction over certain jurisdictionally mixed services in order to 'foster[] administrative simplicity' or otherwise to promote federal policy interests." *Id*. at 52 citing Qwest Corp., 380 F.3d at 371; Southwestern Bell v. FCC, 153 F.3d 523, 543 (8th Cir. 1998)

This approach clearly upsets the unique regulatory framework established to ensure federal and state jurisdictions and appears to conflict with the the FCC's stated intention that the preemption granted to Vonage in the Vonage Order would not be extended to VoIP providers where a clear separation of interstate and intrastate services could be found. In its *VoIP USF Order*, the FCC stated,

> we note that an interconnected VoIP provider with the capability to track the jurisdictional confines of customer calls would no longer qualify for the preemptive effects of our Vonage Order and would be subject to state regulation. This is because the central rationale justifying preemption set forth in the Vonage Order would no longer be applicable to such an interconnected VoIP provider.[32]

Further, in the context of the petitions filed by Time Warner Cable, sufficient justification that federal policy has been frustrated is severely lacking. In the context of the Vonage Order, the Commission determined that Minnesota's state certification and other requirements in its order produce "a direct conflict with [the Commission's] federal law and policies."[33] However, as demonstrated by the SCTC in its comments and *ex partes*, the facts surrounding the petitions filed by Time Warner Cable in these proceedings concern basic state certification procedures to ensure orderly and reasonable provision of communications services – the same type of state certification processes that Time Warner Cable and other cable providers have voluntarily subjected themselves to in many states. For example, in Mr. Britt's Testimony, he proudly declares that Time Warner Cable has obtained state regulatory certification "[i]n the interest of rolling out [Time Warner Cable's] service in the smoothest possible manner."[34] We are aware of many other cable companies that have also been certified by states to provide competitive services as well as states such as South Carolina which provide alternative/flexible/minimal regulation for new competitive providers.

Rather than demonstrating that federal policy has been frustrated, the fact that many cable companies have chosen to obtain state certification is evidence that an orderly process that fosters federal policy goals can be maintained while addressing the issues unique to state commissions. The brusque approach of Time Warner Cable and its claim it is harmed because of South Carolina certification process is unsupported due to the fact that other similarly-situated cable company providers have become certified and have accepted the minimal responsibilities, such as being financially and technically responsible for its interconnection and traffic.

The SCTC submits that any attempt to apply the Vonage Order to Time Warner Cable's Digital Phone service would be misplaced. Furthermore, a fact intensive analysis of Time Warner Cable's Digital Phone service would likely show that for traffic entering the PSTN – which does not include computer-to-computer Pulver-type calls – the identification of the traffic is clear and straightforward and that state regulation is important in order to effectuate federal policies.

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[32] Universal Service Contribution Methodology, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) ("*VoIP USF Order*") at para. 56 (emphasis supplied) (footnote omitted).

[33] Vonage Order at paras 20-22.

[34] Testimony at 2.

IV. Conclusion

As demonstrated herein, Time Warner Cable's Digital Phone service shares no similar basic characteristics of Vonage's DigitalVoice service as they were outlined in the FCC's Vonage Order. On the contrary, the way that Time Warner Cable provisions its Digital Phone service is almost identical to the way that many traditional phone systems are provisioning their services through the use of softswitches and IP transport to the customer's premise over managed networks. Further, there is insufficient justification in the record to demonstrate that federal policy has been frustrated and that preemption of state authority is warranted. Accordingly, the SCTC urges the Commission to reject any notion of applying the Vonage Order to Time Warner Cable's Digital Phone service in acting upon the petitions that the cable company has filed in these proceedings.

Respectfully submitted,

By: /s/ Keith Oliver
Keith Oliver
Senior Vice President of Corporate Operations
Home Telephone Company

On behalf of

The South Carolina Telephone Coalition
[A list of the Members is attached as Exhibit A]

cc: Chairman Kevin J. Martin
Daniel Gonzalez
Michelle Carey
Thomas Navin

Attachments

EXHIBIT A

South Carolina Telephone Coalition Member Companies

Bluffton Telephone Company, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company d/b/a Comporium Communications
Hargray Telephone Company, Inc.
Home Telephone Company, Inc.
Horry Telephone Cooperative, Inc.
Lancaster Telephone Company d/b/a Comporium Communications
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
PBT Telecom
Ridgeway Telephone Company
Rock Hill Telephone Company d/b/a Comporium Communications
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company

Counsel to South Carolina Telephone Coalition
McNair Law Firm, P.A.

M. John Bowen, Jr.
Margaret M. Fox

Consultants to South Carolina Telephone Coalition
John Staurulakis, Inc.

Douglas Meredith
John Kuykendall
Valerie Wimer

ATTACHMENT 1

Given at a Full Committee Hearing:
Voice Over Internet Protocol (VOIP) Hearing
Tuesday, February 24 2004 - 9:30 AM - SR - 253

Links

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The Testimony of

Mr. Glenn A. Britt

Chairman & Chief Executive Officer, Time Warner Cable

Good morning Chairman McCain, Senator Hollings, and members of the Committee. My name is Glenn Britt, and I am Chairman and CEO of Time Warner Cable. Thank you for inviting me to speak here today about Time Warner Cable's experience deploying Voice-Over-Internet Protocol, and for providing an opportunity to share my thoughts on the important role policy makers and regulators can play in facilitating the growth and development of this new voice service.

Introduction Time Warner Cable is the nation's second largest MSO, serving nearly 11 million video subscribers and over 3 million broadband subscribers in 27 states. Time Warner Cable offers subscribers a wide array of entertainment and communications services, including basic cable, digital cable, high-speed data, video on demand, and subscription-based video on demand services. Time Warner Cable is also taking a lead role in offering other new products to its customers including High Definition Television (HDTV), Digital Video Recording (DVR) functionality, and home networking to interconnect multiple computers in the household with a single broadband connection. And as I will discuss in more detail this morning, we have already begun the process of adding to this mix a highly competitive facilities-based voice offering to the more than 18 million Americans within Time Warner Cable's service areas.

Time Warner Cable's VoIP Service Will Fulfill the Goal of Facilities-Based Telecommunications Competition

Advances in Voice-Over-Internet Protocol technology – or "VoIP" as it has come to be known – give Time Warner and other cable operators the ability to fulfill the vision of the 1996 Telecommunications Act by bringing true facilities-based competition in telephony services to the marketplace. Since 1996, cable operators have invested more than $84 billion in private risk capital to rebuild and upgrade their facilities. VoIP technology allows cable operators to use these new broadband networks to offer subscribers high quality, reliable, local and long distance telephony services, making it an economically feasible means of competing with incumbent carriers. The development of IP-based telephony services also gives the few cable operators that have not yet upgraded their systems another reason to do so. After several years of testing and developing a potential VoIP offering, Time Warner Cable launched what we call "Digital Phone" on a commercial basis to residential customers in Portland, Maine in May 2003. Today, we provide Digital Phone service to nearly 12,000 customers in the Portland area, and we continue to add VoIP capability to our cable systems. We recently launched Digital Phone service in Raleigh, North Carolina, and I am pleased to report that we plan to make Digital Phone operational throughout the majority of the Time Warner Cable footprint by the end of 2004. To the customer, Digital Phone feels just like conventional telephone service. When a customer orders Digital Phone service, Time Warner Cable installs a new cable modem/ telephony device called a Multimedia Terminal Adapter or "MTA" in the customer's home. The MTA is connected to existing inside wiring, enabling a subscriber to receive voice service over each existing telephone jack in his or her home. In addition, consumers switching to Digital Phone can maintain their current telephone numbers, and have access to toll-free 800 calling, Telecommunications Relay Services for the disabled, Enhanced 911 (E911) services, and Directory Listings. With respect to matters of particular importance to this Committee, let me emphasize that Time Warner Cable contributes to both state and federal universal service funds in connection with our Digital Phone service. Digital Phone also includes the capability to assist law enforcement agencies by permitting the interception, when necessary, of both call identifying information and call content in response to lawful requests. Time Warner Cable views this as a critical aspect of its service in this time of heightened national security and law enforcement concerns. Time Warner Cable's Digital Phone service is delivered over a managed network with quality of service standards designed to ensure that customers are provided with the same high quality of service they have come to expect from traditional telephone service. The upgraded, two-way capable, digital network that we have built during the past several years is the central component of the architecture used to provide Digital Phone services. We are deploying devices called "softswitches" on a regional basis, which manage, route, and control calls originating from and terminating into our network and provide vertical telephone features (such as caller ID and call waiting) without the need for a Class 5 circuit switch. Using the softswitch architecture, calls travel over a network managed by Time Warner Cable—not the public Internet—as they move toward their final destination, whether that is on our network or a location on the Public Switched Telephone Network (PSTN). When calls to reach customers not served by Time

Warner Cable must traverse the PSTN, Time Warner Cable completes these calls through its relationships with competitive local exchange carriers. We recently announced strategic relationships with MCI and Sprint under which those carriers will assist in the provisioning of Digital Phone service to customers, termination of IP voice traffic to the public switched telephone network, delivery of Enhanced 911 service, local number portability and carrying long distance traffic. With the rollout of Digital Phone, Time Warner Cable consumers are already benefiting from having a choice of facilities-based telephone providers. Moreover, deployment of VoIP service by Time Warner and other cable operators also has the potential to offer consumers new features and functionality such as multimedia conferencing, interactive gaming, and other multimedia applications which will over time demonstrate the real benefits consumers can reap from the integration of video, data, and voice services over a single broadband network. It is the next development in the increasingly competitive communications environment where cable competes for customers with telephone companies, satellite distributors, and others offering one or more services. It is no surprise that cable operators have begun and will continue to embrace this technology. Time Warner Cable is leading the way.

VoIP Regulation Should Encourage and Promote This New Competition

The absence of a clear regulatory framework for VoIP posed a dilemma for Time Warner Cable as we were preparing to bring the service to market. We could assert that VoIP was an unregulated information service and risk challenges from state PUCs and incumbent telephone companies. Alternatively, we could abide by the regulations applicable to more traditional telephone services and risk becoming saddled with a legacy regime in which IP technologies and service offerings do not fit precisely and that, therefore, is inappropriate to the unique character of IP-based telephony. In the interests of rolling out our service in the smoothest possible manner, we decided to obtain state regulatory certification for our VoIP offerings and to comply with traditional telephony requirements while expressly reserving our right to revisit this issue when the FCC and Congress established the appropriate regulatory structure for VoIP services. I respectfully submit that the time for establishing this structure is now. Traditional phone regulation was developed in an era in which the phone company was an established local monopoly with a guaranteed financial return, and regulation was imposed in an effort to protect consumers against the exercise of monopoly power. These principles do not apply to the new world in which VoIP will operate, and it makes no sense to force VoIP – and other technologies that may emerge – into an outdated regulatory scheme. The introduction of new technologies such as VoIP presents an opportunity for the government to reexamine the rules applicable to competitive entrants, and to develop a new, federal regulatory scheme for VoIP that will allow its widespread and speedy deployment, regulating only where demonstrably necessary and leaving the rest to the marketplace. The government's valid concerns – like E911, support for law enforcement needs, access for persons with disabilities, continued funding for universal service, and other important consumer protections – can be satisfied without forcing VoIP into traditional telephony regulation. In short, critical public policy objectives can be satisfied without the wholesale importation of legacy requirements that have failed to keep pace with technological advancements and a more competitive environment. The National Cable & Telecommunications Association, of which Time Warner Cable is a member and whose board of directors I chair this year, has proposed a regulatory approach to VoIP that could accomplish this goal. NCTA has proposed a four-prong baseline test to determine whether a particular IP-based voice service should be subject to a new regulatory framework. The test is based on whether the service has the following four characteristics: 1. it makes use of the North American Numbering Plan (7 or 10 digits phone numbers to reach a called party); 2. it is capable of receiving calls from or terminating calls to the public switched telephone network at one or both ends of the call; 3. it represents a possible replacement for "plain old telephone service"; and 4. it uses Internet Protocol transmission between the service provider and end user customer. If a service meets these qualifications, NCTA calls for balancing VoIP providers' rights and responsibilities to achieve all necessary public policy objectives but through the lightest possible regulation. For example, under this framework, qualifying VoIP providers would be assigned vital responsibilities, such as providing assistance to law enforcement and public safety according to the principles outlined in CALEA; offering 911/E911 services and access for the disabled; contributing to the Universal Service Fund; participating in intercarrier compensation; and complying with general consumer protection requirements. At the same time, such providers would be afforded certain rights essential for successful deployment of competitive voice services, such as the efficient exchange of traffic on public and private networks, number portability, access to 911/E911 resources, proper compensation for terminating calls, non-discriminatory access to universal service support, and access to rights-of way and other facilities without incremental fees. These ideas are described in greater detail in an NCTA White Paper titled: "Balancing Responsibilities and Rights: A Regulatory Model for Facilities-Based VoIP Competition." I have attached to my testimony a copy of this paper for your consideration.

Conclusion Mr. Chairman and Committee Members, we are excited about the future, and believe that a minimally regulatory environment that ensures VoIP providers comply with vital requirements, while still retaining a framework in which providers feel confident to invest, innovate and deploy new technologies like VoIP, will best serve the public. I thank you again for the opportunity to appear to discuss the exciting opportunity in the communications marketplace presented by the emergence of VoIP technology. I look forward to your questions.

Privacy Policy

ATTACHMENT 2

Digital Phone FAQs

Standard Digital Phone Questions

Q: What is Digital Phone?

A: Digital Phone is a multi-feature, residential phone service available from Time Warner Cable. Using Digital Phone is as simple and easy to use as your existing phone service from your traditional phone company, plus you get all the benefits of the Digital Phone calling plan - including unlimited local, in-state and long distance calls within the United States, as well as all US territories and Canada, for one simple monthly price as low as $39.95.

Q: Is there a fee to switch to Digital Phone?

A: No, there is no charge for switching to Digital Phone. Installation is free at this time. And Time Warner Cable gives you a 30-day money back guarantee with all of its services.

Q: Can I keep my current phone number?

A: Yes, you will be able to keep your existing phone number and receive Time Warner Cable Digital Phone. This means that you will continue to receive calls from your family and friends without having to notify them of a new telephone number. We do need to verify portability with each phone number.

Q: Who can get Digital Phone service?

A: Time Warner Cable offers Digital Phone service to customers that subscribe to High-Speed Internet or Cable services in a majority of communities in our service area. Enter your address and phone number at www.twcdigitalphoneoffers.com to see if Digital Phone is available in your area.

Q: How much will I save with Digital Phone?

A: A simple way to know if you will save money is to add your current local bill and long distance bill together (excluding international charges). If the total is more than $44.95 per month, chances are you'll save by switching to Digital Phone service. Digital Phone service also offers the convenience of unlimited calling within the United States, so you never have to worry about your bill going up in any particular month.

Q: What does Digital Phone offer that my current phone service may not?

A: Digital Phone offers:

- The ability to call anyone, anytime, anywhere in the United States, as well as all US territories and Canada, as frequently as you like for a flat monthly price as low as $39.95.
- Popular calling features such as Call Waiting, Caller ID, Call Forwarding and Speed Dial are included at no extra cost.
- The convenience of one bill for local and long distance service.

Q: Can Digital Phone replace my current residential phone service?

A: Yes. Digital Phone provides all your local, in-state and long distance calling so it can replace your current residential phone service. Plus, with Digital Phone you can keep your current phone number. Please note that Digital Phone will not be available if a power outage affects your cable signal.

Q: What will happen to my DSL service when I switch to Digital Phone?

A: Of course, Time Warner Cable recommends that you replace your DSL service with either Road Runner High-Speed Online or our High-Speed Internet partner Earthlink. However, if you wish to keep your DSL service, you will need to keep an analog line. Please let the Time Warner Cable Customer Service representative know when you place your order so they can notify the technician.

Q: Do I have to subscribe to other services from Time Warner Cable to get Digital Phone?

A: No, you do not have to have other services from Time Warner Cable to get Digital Phone. We do recommend customers have either High-Speed Internet or Digital Cable service from Time Warner

Cable to subscribe to Digital Phone. If you subscribe to Digital Cable or High-Speed Internet service from Time Warner Cable or its partners you'll pay just $44.95 per month for Digital Phone. If you subscribe to Digital Cable and High-Speed Internet services from Time Warner Cable, you'll receive a discount of $5.00 per month and pay just $39.95 per month for Digital Phone.

Q: Can I use Digital Phone for my business?

A: No, Digital Phone is a residential telephone service.

Q: Should I disconnect my current phone service?

A: If you keep your current telephone number (i.e., port your number) you should not contact your current phone service provider. You will continue to have service from your current phone provider until we complete your Digital Phone installation. Once Digital Phone installation is complete and your phone number is successfully transferred, we will contact your current phone service provider to ensure your previous phone service is disconnected. However, if you receive a new telephone number from Time Warner Cable and no longer desire phone service from your current phone service provider, then you will need to contact your current phone service provider to disconnect your current phone service. We recommend that you disconnect your current phone service after the Digital Phone is complete so you are not without phone service during the change.

Questions about Digital Phone installation, equipment and service

-Can I have all the phones in my home connected to Digital Phone?

-Can I use my High-Speed modem to access the Internet and talk on the phone at the same time?

-Does wireless Internet service work with Digital Phone?

-How long will it take for my Digital Phone service to be installed?

-Do I need to be home for the installation of Digital Phone?

- What should I do if I cannot be home for my Digital Phone Service installation appointment?

-I was not at home for my Digital Phone Service installation and now my phone is out-of-service. What should I do?

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-How long does it take to install Digital Phone Service?

-Do I have to keep the Digital Phone Service modem in a specific location?

-How will I know when my Digital Phone Service has been activated?

-Does Time Warner provide technical support for Digital Phone Service?

-Who maintains the Digital Phone modem used for Digital Phone?

Q: Can I have all the phones in my home connected to Digital Phone?

A: Up to five phones in your home can be connected to Digital Phone. And Digital Phone will work with almost all existing telephones, so there's no new equipment to purchase.

Q: Can I use my High-Speed modem to access the Internet and talk on the phone at the same time?

A: Yes. Your High-Speed modem will allow you to access the Internet and talk on the phone at the same time because each feature of your modem is independent.

Q: Does wireless Internet service work with Digital Phone?

A: Yes, though the Digital Phone modem itself doesn't support wireless. You will either receive a phone modem in addition to your wireless modem or our technician will make sure your router continues to operate with the Digital Phone service.

Q: How long will it take for my Digital Phone Service to be installed?

A: We are typically able to schedule the installation of Digital Phone Service within 8 to 14 business days.

Q: Do I need to be home for the installation of Digital Phone?

A: Yes. In order for Time Warner Cable to effectively complete your installation and test your Digital Phone Service, we need you to be present at time of installation.

Q: What should I do if I cannot be home for my Digital Phone installation appointment?

A: If you will not be home for your Digital Phone Service installation appointment, you may designate a friend or family member age 18 or older to act as a replacement on your behalf. The individual you designate will be responsible for approving the Digital Phone Service installation and signing the subscriber agreement and other important documents. Call Time Warner Cable at 1.877.276.3015 to designate a replacement to act on your behalf. If you are unable to find a friend or family member age 18 or older to act as a replacement on your behalf, it is very important to call 1.877.276.3015 to reschedule your

Q: How long does it take to install Digital Phone Service?

A: A typical installation takes approximately 60 - 90 minutes.

Q: Do I have to keep the Digital Phone modem in a specific location?

A: If you are a current High-Speed Internet customer then the installation will involve switching out your existing High-Speed cable modem for a new Digital Phone Service modem. The modem should remain with your computer so that you can use it for High-Speed Internet access as well. A phone outlet needs to be nearby to complete a typical installation.

Q: How will I know when my Digital Phone service has been activated?

A: Your Digital Phone Service will be activated at the time our Time Warner Cable technician has completed installation of your Digital Phone service. During installation, your Time Warner Cable technician will provide you a Welcome Kit that summarizes the calling plan and features associated with Digital Phone Service. When you receive your Welcome Kit, be sure to look it over to make sure you understand all aspects of the Digital Phone service.

Q: Does Time Warner provide technical support for Digital Phone Service?

A: Yes. Time Warner Cable provides complete support for all of our services and Digital Phone is no different, we are available 24 x 7 if there is an emergency.

Q: Who maintains the Digital Phone modem used for Digital Phone?

A: Time Warner Cable maintains the Digital Phone Service modem. In fact, one of Digital Phone's greatest benefits is that Time Warner Cable automatically upgrades your equipment to the latest technology with the installation of the Digital Phone Service modem.

Q: Do I have to buy any additional equipment to use Digital Phone?

A: No. There is no additional equipment to buy as long as you have a telephone in your home.

Q: Do I need a special phone for Digital Phone Service?

A: No. Any standard, touch-tone phone will work with Digital Phone. It makes no difference whether it is a wall mounted phone or a portable cordless phone. All types of standard, touch-tone phones can be used. Also, answering machines and caller ID display equipment work with Digital Phone service.

Q: Can I use my existing cordless home phone with Digital Phone?

A: Yes. Cordless home phones work with Digital Phone Service.

Q: Will my monitored security system work with Digital Phone?

A: Digital Phone Service will work with most monitored security systems. However, please note that Digital Phone Service does not include back-up power and, as is the case with a cordless phone, should there be a power outage Digital Phone Service will not be available until the power is restored. If this is a concern, you can connect a standard analog line from your previous telephone provider to your monitored security system. Time Warner Cable, similar to traditional telephone service providers, does not install, support, or service monitored security systems. Time Warner Cable strongly recommends contacting your security system provider to conduct a test on your alarm system

Q: Will Digital Phone Service work with Home Networking?

A: Yes, Digital Phone Service should have no impact on Home Networking.

Q: Will my fax machine work with Digital Phone Service?

A: Digital Phone Service currently does not support fax or dial-up Internet connections. While these communications may work occasionally using Digital Phone Service, Time Warner Cable recommends maintaining a standard analog phone line for the use of fax and dial-up Internet services. Time Warner Cable plans to introduce enhancements and products to support fax and dial-up Internet in the near future.

Q: Will my caller ID display work with Digital Phone Service?

A: Yes. Caller ID display equipment works with Digital Phone Service.

Q: Can I utilize Caller ID with Digital Phone Service?

A: Yes. Digital Phone Service offers Caller ID, as well as Call Waiting and Call Waiting ID, absolutely free as part of the Digital Phone calling plan. To use the Caller ID features, however, you must have Caller ID display equipment or a phone with Caller ID built in.

Q: Does Digital Phone Service offer voicemail?

A: Yes. Voice Mail is available to Digital Phone Service customers. Some additional fees may apply based on your location.

Q: Does Digital Phone Service offer a calling card?

A: No, Digital Phone Service does not offer a calling card at this time. Time Warner Cable plans on offering a calling card in the near future.

Q: How do I use Call Waiting?

A: Call Waiting alerts you when there's another incoming call then it allows you to put the first caller on hold while you answer the incoming call. You will be alerted there is another incoming call by a tone you will hear during an existing call. When you hear this tone, simply press and release the receiver or 'flash' button. This will put the first caller on hold and allow you to speak to the incoming caller. To return to the first call, press and release the receiver or 'flash' button again.

Q: Will my dial-up Internet Service Provider work with Digital Phone Service?

A: Digital Phone Service currently does not support fax or dial-up Internet connections. While these communications may work occasionally using Digital Phone Service, Time Warner Cable recommends maintaining a standard analog phone line for the use of fax and dial-up Internet services. Time Warner Cable plans to introduce enhancements and products to support fax and dial-up Internet in the near future.

Questions about long distance, billing, taxes and surcharges

-Are there additional access fees will I be charged?

-Why am I still receiving bills from my former phone company?

Q: Can I choose my own Long Distance Carrier?

A: By subscribing to Digital Phone service you are choosing Time Warner Cable to be your Long Distance Carrier.

Q: Can I make long distance calls with Digital Phone?

A: Yes. Digital Phone allows you to call anyone, anytime, anywhere in the United States, as well as all US territories and Canada, for one simple monthly price. Calls to international locations are billed at rates competitive with other major providers.

Q: How do I make a long distance call with Digital Phone?

A: There are no changes to how you make a long distance call with Digital Phone. Just dial like you normally would.

Q: What U.S. Territories are included in Digital Phone's unlimited long distance calling?

A: Calls to the following U.S. Territories are included in Digital Phone's unlimited long distance calling: Guam, Puerto Rico, the North Mariana Islands and the U.S. Virgin Islands. Calls to the following U.S. Territories are NOT included in Digital Phone's unlimited long distance calling: American Samoa, Guantanamo Bay & the Marshall Islands. Rates for calls to these areas are competitive with other major long distance providers.

Q: How do I make international calls with Digital Phone?

A: There are no changes to how you call internationally. Just dial like you normally would (for example: 011 + country code + city code + local number of the person you are trying to reach).

Q: Can I use my calling card for long distance calls with Digital Phone?

A: Yes, but you might not have to use calling cards anymore. The Digital Phone calling plan includes unlimited long distance calling in the United States, as well as all US territories and Canada, for one simple monthly price as low as $39.95, so your calling card should only be used away from home now! Currently, Time Warner Cable does not offer a calling card connected with Digital Phone.

Q: Will I hear a difference in my long distance calls with Digital Phone?

A: No, you will not experience any change in the quality of your local, in-state or long distance calls. Some Digital Phone customers have even remarked that they now have a clearer connection.

Q: Will Time Warner Cable's 30-Day money back guarantee apply to Digital Phone Service?

A: Yes. Time Warner Cable is confident that you'll like the simplicity of Digital Phone Service. In the unlikely event that you do not wish to keep the service, as with all Time Warner Cable products, you're eligible for a 30-Day money back guarantee. Additional charges for services incurred during the first 30

days, such as calls to international destinations and operator assistance calls are independent of this guarantee.

Q: How will Digital Phone Service be billed?

A: Your Digital Phone Service calling plan charges will appear on your Time Warner Cable bill. Additional charges for any calls made to international locations (excluding Canada), Directory Assistance and Operator Services will appear as line items on the same bill. Call details are available online through "My Account" at www.twcable.com/digitalphone.

Q: Will I receive a separate bill for Digital Phone Service?

A: No. Digital Phone Service will appear as a line item on your Time Warner Cable monthly statement. Additional charges for any calls made to international locations (excluding Canada), Directory Assistance and Operator Services will appear on additional lines on the same bill. One of the greatest benefits of the Digital Phone Service calling plan is the convenience of receiving one bill for your local and long distance service along with your other services from Time Warner Cable.

Q: Will I be provided with a detailed breakdown of my call activity with Digital Phone Service?

A: Yes. You can access your call detail information at www.twcable.com/digitalphone .

Q: Do I have to pay the entire monthly rate if I signed up for the Digital Phone Service mid-month?

A: Your monthly fee for the first month will be based on the number of days we provided you with service. Of course, additional charges for any calls made to international locations, Directory Assistance and Operator Services will be billed in relation to the month those charges were incurred.

Q: Are there extra charges associated with Digital Phone Service?

A: Yes. In addition to Digital Phone's low monthly rate for unlimited calling in the United States and Canada, you will be charged extra, but at competitive rates, for calls international locations, Directory Assistance and some Operator Services. Call details are available online through "My Account" at www.twcable.com/digitalphone.

Q: What kind of taxes will I be charged?

A: All Digital Phone service customers will pay state and federal taxes similar to those paid to previous local and long distance providers. Most customers will pay approximately $8.00 per month in taxes and fees. Of course, if you make calls to international locations or use Operator Services or Directory Assistance, your taxes will increase based on usage.

Q: Are there additional access fees I will be charged?

A: All Digital Phone Service customers will pay approximately $2.00 per month in access fees. We understand that fees can be frustrating and have made an effort to minimize the fees charged by Digital Phone Service. Many traditional phone companies charge regulatory, state and federal fees in excess of $2.00 per month, so that's additional money you'll be saving by making the switch to Digital Phone.

Q: Why am I still receiving bills from my former phone company?

A: You may have switched service during the middle of your billing cycle with your former phone company. Based on this, the carrier will send you a bill for the last days that you had service in order to close your account.

Questions about Special Digital Phone Features

-What calling features does Digital Phone offer?

-Can I receive collect calls with Digital Phone?

-Can I call 911 using Digital Phone?

Q: What calling features does Digital Phone offer?

A: Digital Phone offers popular calling features at no additional charge such as:

- Call Waiting, so you never miss an important call at home
- Caller ID, so you can find out who's calling before you answer
- Call Waiting with ID, so you can find out who's calling before you click over
- Speed Dial, for easy dialing
- Call Forwarding, so you can receive your calls anywhere.

Q: Can I receive collect calls with Digital Phone?

A: Yes, you can receive most collect calls. Collect call charges will appear in a lump sum on your monthly bill in a line called Directory Assistance and Operator Services. Account details are available to you at www.twcdigitalphone.com by clicking 'My Account'.

Q: Can I call 911 using Digital Phone?

A: Yes, absolutely. Safety is an important consideration and Digital Phone provides enhanced 911 service. Please note that if there is a power outage that affects your cable signal, your Digital Phone service will not be available until the power is restored.

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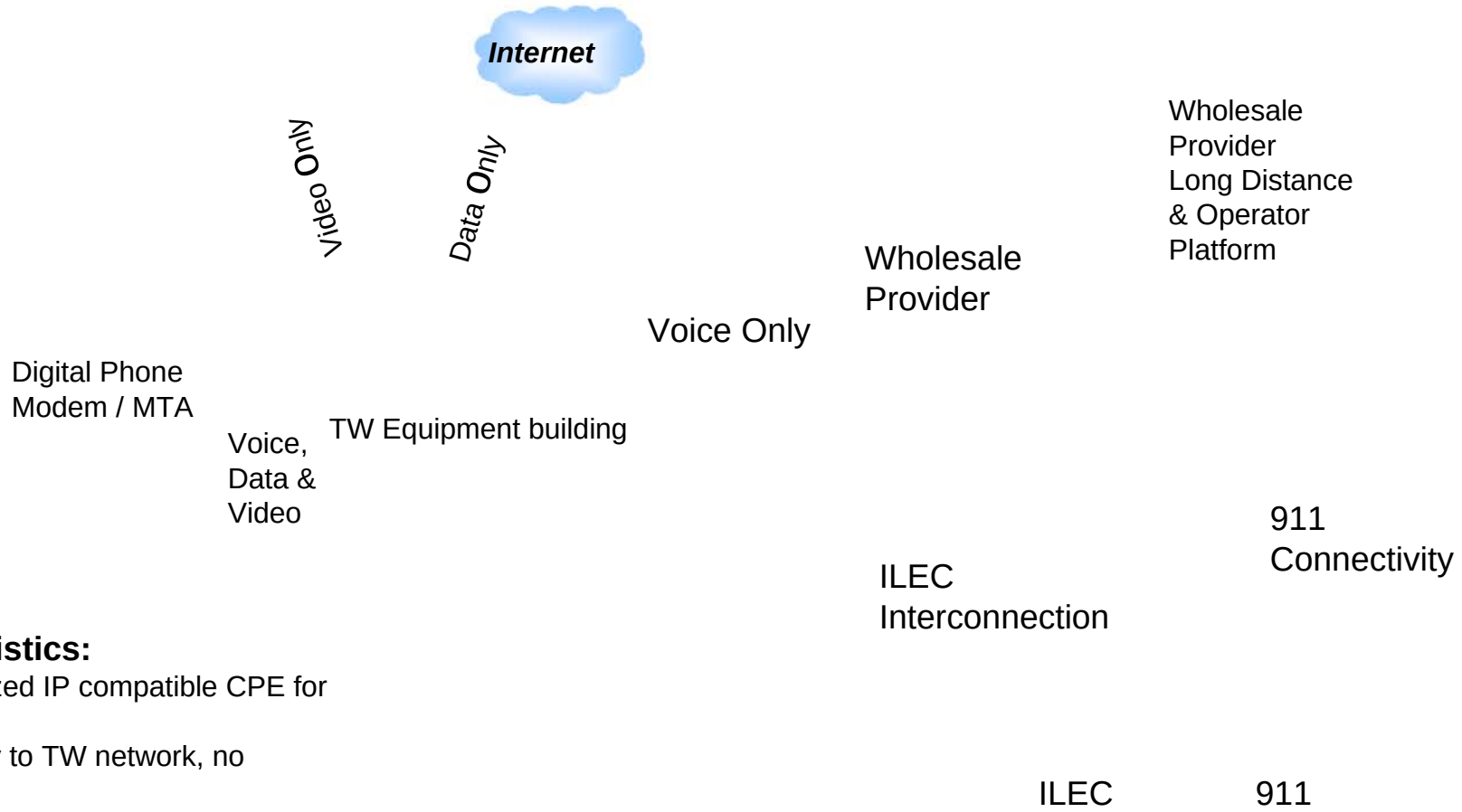
ATTACHMENT 3

Time Warner Interconnection Via 3rd Party



Characteristics:

- No specialized IP compatible CPE for voice
- Limited only to TW network, no mobility
- Geographic based telephone number.
- IP addresses only internal to TW equipment
- Internal equipment separates Voice/Data/Video before it is sent to PSTN